

July 2003

Update: Criminal Procedure Monograph 2—Issuance of Search Warrants (Revised Edition)

2.9 Affidavits Based upon Hearsay Information

Replace the “Note” on page 18 with the following text:

The Michigan Supreme Court has held that the exclusionary rule does not apply to evidence resulting from a search warrant obtained in violation of the affidavit requirements of MCL 780.653, unless failure to apply the rule would compromise a defendant’s constitutional rights. *People v Hawkins*, ___ Mich ___, ___ (2003).

2.9 Affidavits Based upon Hearsay Information

B. Informant Must Be Credible or Information Must Be Reliable

Insert the following information at the end of Subsection B on page 19:

Even where a search warrant issued from an affidavit is later found insufficient in light of the requirements of MCL 780.653, the evidence obtained in execution of the “faulty” warrant may still be admissible against a defendant. In *People v Hawkins*, ___ Mich ___, ___ (2003), the defendant moved to suppress evidence obtained pursuant to a search warrant based on an affidavit that failed to satisfy the requirements of MCL 780.653(b) for an affiant’s reliance on unnamed sources. In deciding that the exclusionary rule did not apply to the evidence obtained in *Hawkins*, the Court overruled in part its previous rulings in *People v Sloan*, 450 Mich 160 (1995) and *People v Sherbine*, 421 Mich 502 (1984). ___ Mich at ___. According to the *Hawkins* Court:

“[W]here there is no determination that a statutory violation constitutes an error of constitutional dimensions, application of the exclusionary rule is inappropriate unless the plain language of the statute indicates a legislative intent that the rule be applied.” ___ Mich at ___.

The Court predicted that some statutory violations would be of constitutional magnitude, and the exclusionary rule would likely be appropriate to suppress evidence obtained from warrants issued on inadequate affidavits. However, the Court concluded that

“[n]othing in the plain language of §653 provides us with a sound basis for concluding that the Legislature intended that noncompliance with its affidavit requirements, standing alone, justifies application of the exclusionary rule to evidence obtained by police in reliance of a search warrant.” ___ Mich at ___.

2.13 The Exclusionary Rule and Good Faith Exception

Replace the last paragraph on page 25 with the following:

Michigan does not yet recognize a “good-faith exception to a violation of Michigan’s counterpart to the Fourth Amendment, Const 1963, art 1, §11.” *People v Scherf*, sub nom *People v Hawkins*, ___ Mich ___, ___ n 8 (2003). In *Scherf*, the Michigan Supreme Court did not address whether a good-faith exception should apply to evidence seized during a search incident to a defendant’s arrest, even though the arrest warrant was issued as a result of a petition that failed to satisfy the requirements of MCR 3.606(A). The Court observed:

“Irrespective of the application of the exclusionary rule in the context of a *constitutional* violation, the drastic remedy of exclusion of evidence does not necessarily apply to a *statutory* [or court rule] violation.” ___ Mich at ___ (emphasis in original).

According to the Court, the plain language of a court rule or statute determines whether the Legislature intended the exclusionary rule to apply to court rule and statutory violations. If no such language exists, exclusion of evidence may be proper where the statutory or court rule violation permitted discovery of evidence in violation of a defendant’s constitutional rights. ___ Mich at ___. Whether a good-faith exception should apply to evidence seized pursuant to a “faulty” warrant depends first on a determination that a rule or statutory violation from which the warrant issued was of constitutional significance. Noting that the same rules of interpretation apply to both statutes and court rules, the *Hawkins* Court held:

“[W]here there is no determination that a statutory violation constitutes an error of constitutional dimensions, application of the exclusionary rule is inappropriate unless the plain language of the statute indicates a legislative intent that the rule be applied.” ___ Mich at ___.

In *People v Scherf*, *supra*, the defendant was arrested after his probation officer petitioned the court for an arrest warrant when the defendant failed to comply with the terms of his probation. The defendant claimed the arrest warrant was invalid (and the evidence seized incident to the arrest should be suppressed) because the probation officer’s petition failed to satisfy the affidavit requirement of MCR 3.606(A), the court rule governing contempt proceedings for violations occurring outside the court’s presence. The Court concluded that nothing in MCR 3.606(A)’s plain language indicated that the the exclusionary rule was intended to apply to violations of the court rule’s affidavit requirement.

Whether Michigan will adopt some version of a good-faith exception to the exclusionary rule may be decided in *People v Goldston*, 467 Mich 938 (2003). In *Goldston*, the Court granted leave to “consider whether to adopt and apply a good-faith exception to the exclusionary rule.” ____ Mich at ____ n 8.